

HUMAN RIGHTS

The problem of defining citizenship in domestic and international law: balancing security with fundamental rights

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Introduction: the Problems of Citizenship

‘The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.’ – Hannah Arendt¹

Deprivation of citizenship is one of the most extreme powers available to states today, described as a ‘punishment more primitive than torture.’² There is an emerging trend towards deprivation of citizenship as a counterterrorism measure in Europe and particularly the United Kingdom (‘UK’) to uphold national security.³ Any British person who is presumed to have another nationality can be stripped of their British citizenship as long as the Home Office is ‘satisfied’ that it is for the conducive to the public good.⁴ The legislation has shifted towards granting the executive body more authority, raising debates about what citizenship means and how it should be assigned.

Citizenship deprivation decisions have become a recurring topic in the United Kingdom (UK), with reports highlighting rising cases and concerns over statelessness and lack of due process.⁵ Over one thousand citizenship deprivation orders have been decided, rising from single digits in the early 2010s before rising sharply to approximately 148 cases in 2017, and reaching over 300 in 2022; reflecting a significant overall increase over those years.⁶ Assumed as a secure right, citizenship is swiftly becoming a revocable privilege, particularly in national security cases. In response to 9/11 and the London bombings, various countries have implemented counterterrorism measures, including citizenship deprivation. Recently, states have been developing citizenship deprivation rights, particularly for dual nationals involved in terrorist organisations; the UK emerging as a leading jurisdiction due to its extensive use of deprivation powers, a higher number of cases than most countries, and a significant discretionary policy that may become an international reference point.⁷

The UK Home Secretary has long held the power to deprive citizenship, but currently exercises this power with wider discretion through internal assessments without judicial oversight, treating

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¹ Hannah Arendt, *The Origins of Totalitarianism*, (1st edn, Penguin Modern Classics 2017) 387, 388.

² *Trop v Dulles*, 356 US 86, 356 (1958).

³ European Network on Statelessness (ENS), ‘Deprivation of nationality and the prevention of statelessness in Europe’ (Thematic Briefing, 2021), 5 <<https://www.statelessness.eu/updates/publications/statelessnessindex-thematic-briefing-deprivation-nationality-and-prevention>> accessed 2 March 2025.

⁴ British Nationality Act 1981 (BNA 1981), s 40(2); Home Office, ‘Deprivation of British citizenship version 3.0’, (Caseworker guidance, 2024) 5 <<https://assets.publishing.service.gov.uk/media/67165c834a6b12291ed99818/Deprivation+of+British+citizenship.pdf>> accessed 2 March 2025.

⁵ Diane Taylor, ‘Hundreds stripped of British citizenship in last 15 years, study finds’ (*The Guardian*, 21 Jan 2022) <<https://www.theguardian.com/uk-news/2022/jan/21/hundreds-stripped-british-citizenship-last-15-years-study-finds>> accessed 25 February 2025 *see also* Jack Barton and Mark Townsend, ‘Surge in number of Britons fighting to hold on to their citizenship’ (*The Guardian*, 26 February 2023 <<https://www.theguardian.com/uk-news/2023/feb/26/surge-in-number-of-britons-fighting-to-hold-on-to-their-citizenship>> accessed 25 February 2025.

⁶ CJ McKinney, Melanie Gower and Terry McGuinness, ‘Deprivation of British citizenship and withdrawal of passports’ (Research Briefing Paper No 6820, House of Commons Library 18 December 2024) 5, 11-12.

⁷ Canadian Citizenship Act Amendment Act, SC 2014, c 22 (j); Institute on Statelessness and Inclusion (ISI) and Global Citizenship Observatory, ‘Instrumentalising Citizenship in the Fight Against Terrorism: a Global Comparative Analysis of Legislation on Deprivation of Nationality as a Security Measure’ (ISI, 2022) 5 <<https://www.institutesi.org/resources/instrumentalising-citizenship-report>> accessed 10 February 2025.

it as an administrative power; a significant development from earlier eras.⁸ Although deprivation laws date back to 1914, the practice has been largely dormant until the 2000s: the last case of deprivation was in 1973.⁹ Further, the 1914 laws only involved naturalised citizens, an additional acquisition of citizenship obtained through an application process rather than ethnicity/birthplace.¹⁰

However, from the 2000's the laws shifted to broaden the profile of individuals such as British-born dual nationals that can be subjected to deprivation, and the threshold of deprivation have been lowered. This change affects dual nationals or individuals with non-British heritage, as it is prohibited to remove citizenship if such deprivation would render an individual stateless. Studies have suggested that many of those affected by deprivation cases are Muslims with South Asian, Middle Eastern or North African ancestry, including UK-born individuals and Albanian nationals. This is likely due to increasing counterterrorism measures targeting these communities, with the prevalence of dual nationality among them possibly contributing to their circumstances.¹¹ In 2014, at least five of the 18 individuals with deprivation cases were British born, where all five cases held dual nationality.¹² Significantly, the Immigration Act ('IA') 2014 section 66 has made it possible to render an individual stateless with deprivation decisions. Since 2014, approximately 1048 citizenship deprivation orders have been made.¹³ With recent changes in the framework, it is reported that 'two in five people in England and Wales from an ethnic minority background could become eligible to be deprived of their citizenship without warning'.¹⁴

This article explores the legal, ethical and human rights challenges arising from the UK's citizenship deprivation policy and its alignment with international law particularly on deprivation decisions occurring due to the 'conducive to the public good' as its main focus. It critically evaluates whether the current legislation upholds or undermines human rights and legal principles, through legal analysis, case studies and theoretical perspectives. The article will discuss how citizenship can be a tool for indirect discrimination, and the necessity of upholding human rights standards in the light of state power and security policies. This article begins by outlining the legal framework of citizenship deprivation in the UK by analysing the history of citizenship deprivation and exploring the power shift from the judiciary to the Home Secretary to illustrate the exclusionary policies rooted in the colonial history, alongside the weakened legal safeguards against arbitrary deprivation through case law and legislation. A study of Shamima Begum's case will highlight the legal issues arising in practice. Her recent claims have become a central example of how deprivation laws are applied in high-profile national security matters, where it provides a perspective through the legal and ethical considerations and implications of deprivation powers in practice. Importantly, her case highlights the intersection between domestic nationality laws and international legal obligations to the right to nationality, where it provides an area of analysing the UK's current stance on international human rights norms. Notably, it does not make any judgments towards Begum's conduct and is instead an analysis on

⁸ (n 4).

⁹ Home Office, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (White Paper, Cm 5387, 2002) para 2.22.

¹⁰ British Nationality Act and the Status of Aliens 1914 s. 2, 7.

¹¹ McKinney (n 6) 5; Frances Webber, 'Citizenship: From Right to Privilege (Institute of Race Relations, 2022) <<https://irr.org.uk/wp-content/uploads/2022/09/Deprivation-of-citizenship-Final-LR.pdf>> accessed 23 June 2025.

¹² Vic Parsons, 'What do we know about citizenship stripping?' (*The Bureau of Investigative Journalism*, 10 December 2014) <<https://www.thebureauinvestigates.com/stories/2014-12-10/what-do-we-know-about-citizenship-stripping/>> accessed 10 February 2025. See also Chris Woods and Alice Ross, 'Medieval Exile': The 42 Britons stripped of their citizenship' (*The Bureau of Investigative Journalism*, 26 February 2013) <<https://www.thebureauinvestigates.com/stories/2013-02-26/medieval-exile-the-42-britons-stripped-of-their-citizenship/>> accessed 23 June 2025.

¹³ McKinney (n 6) 5, 11-12.

¹⁴ Ben van der Merwe, 'Exclusive: British citizenship of six million people could be jeopardised by Home Office plans' (*the New Statesman*, 1 December 2021) <<https://www.newstatesman.com/politics/2021/12/exclusive-british-citizenship-of-six-million-people-could-be-jeopardised-by-home-office-plans>> accessed 26 January 2025.

points of law, as the case exemplifies the broader trends in the deprivation law and the legal and human rights implications of citizenship deprivation decisions in practice.

Subsequent sections critically examine the ethical and human rights implications of citizenship deprivation powers. The article considers the political ethics on rights attached to citizenship with also analysing human rights law and international frameworks to answer whether the UK's position is consistent with international law and comparative analysis between the policies of other countries. The article aims to answer whether the UK's approach prioritising national security over fundamental human rights securitises the current legislation and whether the current safeguards can pose risks to fundamental rights. By examining these challenges this piece will shed light on whether the current policies are discriminative.

Finally, the article analyses the current changes towards citizenship on the impact of globalisation and discusses citizenship deprivation in a broader context, comparing the UK's current position with the global shift in defining citizenship. Global trends such as increased migrations, digital nomadism and economic citizenships have established a complex state-individual relationship while also introducing notions of post-nationalism. The article includes a discussion around the justification and the necessity of reform with an analysis on the post-national citizenship models and the British citizenship, to address how the UK can align with international law and globalisation, and enhance legal certainty and uphold democratic values. It concludes by reflecting on the long-term societal impacts of citizenship deprivation, and the re-emphasise on the urgent necessity for reform towards citizenship policies.

Legal framework for citizenship deprivation in the UK

This section will explore the historical developments of British nationality law to provide an analysis of the underlying factors behind deprivation practices; illustrating how deprivation powers have remained as a determining force in the background during the development of the current legal and political frameworks.

Origins of British Nationality Legislation

British nationality law originated from the concept of 'subjects' under feudal rules.¹⁵ Rather than a citizen, the relationship of each individual was governed by law governing soil, *ius soli*, and defined by allegiance to the Crown.¹⁶ Thus, anyone born within the Crown's border, including colonial territories, would become a British subject through their connection with a colony and self-governing dominion.¹⁷ This status granted rights such as passports and consular protection, but did not ensure equal rights across British territories.¹⁸ The subjects' movement across the Empire was restricted based on their colonial origin.¹⁹ This suggests existence of deprivation from the beginning, though in different forms. To bring a standard nationality status alongside a naturalisation procedure, the British Nationality and Status of Aliens ('BNSA') Act 1914 was introduced. This was the first introduction of deprivation law, with powers to revoke naturalisation certificates for misconduct such as disloyalty to the crown or fraud, and applicable only to naturalised citizens.²⁰ Subsequently, BNSA 1914 was amended to involve the Home Secretary in deprivation decisions, as it was argued that extensive powers were essential for efficiency during war time; particularly targeting individuals with German origin.²¹ This indicates an early precedent for connecting national security and exclusion. The word citizenship was used

¹⁵ Ann Dummet, 'United Kingdom' in Rainer Bauböck and others (eds), *Acquisition and Loss of Nationality Volume 2: Country Analyses: Policies and Trends in 15 European Countries*, (1st edn, Amsterdam University Press 2006) 554.

¹⁶ Sarah Mantu, *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, (1st edn, Leiden Brill Academic Publishers 2015) 174.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ British Nationality and Status of Aliens Act 1914 s 7.

²¹ British Nationality and Status of Aliens Act 1918 s 1; HL Deb 26 July 1918, vol 30, col 1220; *McKinney* (n 6) 15.

for the first time in the British Nationality Act ('BNA') 1948 under the concept of subjecthood, although it retained the 1914 deprivation rules. Subsequently, the Commonwealth Immigrants Act ('CIA') 1962 allowed the British and Commonwealth citizens freedom of movement, residence and work in the empire, which raised concerns from the state with the rise of immigration especially from Asian and African territories.²² As a result, CIA 1968 was introduced for immigration controls, restricting Commonwealth citizenship to those born in the UK, due to growing debates around race and colour following the independence of Asian and African nations.²³ Furthermore, the Immigration Act 1971 was implemented, which established the concept of 'partiality' – where individuals meeting the conditions of residency, marriage, registration, ancestry or birth would be free to reside in and enter the UK, maintaining the hierarchical citizenship structure.²⁴

Consequently, the BNA 1981 replaced BNA 1948, introducing three types of citizenships: British citizenship, British Dependent Territories citizenship, and British Overseas citizenship, which established the strength of an individual's connection to the UK; so as to limit the number of individuals who can acquire nationality or right to abode while also aiming to create a structured nationality framework.²⁵ Although the act introduced three main citizenships, it retains overall five forms of British nationality including, British subject and British protected person.²⁶ However, while nationality indicates the legal status of an individual to a state under international law, this is not the case in the UK, as the BNA 1981 indicates that individuals can hold nationalities without having rights provided from citizenship.²⁷ Distinctively, UK law distinguishes between 'nationality' and 'citizenship' where an individual may be legally connected to the state without receiving the full rights of a citizen: thus allowing the state to maintain ties with former colonial subjects.²⁸

Overall, the developments illustrate the discriminatory colonial elements in the citizenship legislation as the acts were reinforced with a racial aim, particularly to exclude diverse immigration.²⁹ Naturalisation under BNA 1981 requires language and residency qualifications, but lacks an integration process, with deprivation powers instead used to enforce 'British values'.³⁰

The Current Legislation: expansion of power

The current deprivation laws are contained in section 40 of the BNA 1981, which grants the Home Secretary the power to deprive citizenship for fraud, which includes false representation and concealment, covering deliberate dishonesty and omission of facts,³¹ such as nationality or date of birth to meet requirements of asylum.³² Disloyalty, disaffection towards Her Majesty conduct or trading with the enemy can also justify deprivation.³³ The Home Secretary must find deprivation is 'conducive to the public good' while preventing statelessness.³⁴ However, the sole reason of deprivation can also be because it is not 'conducive to the public good' as per section 40(2) of the BNA 1981. No statutory definition exists for 'conducive to the public good.', but the

²² Mantu (n 16) 176.

²³ *ibid* 177.

²⁴ Immigration Act 1971 s 2; Mantu (n 16) 177; Dummet (n 15) 564-568.

²⁵ BNA 1981; Mantu (n 16) 177; Dummet (n 15) 568.

²⁶ BNA 1981 Part IV, s 38.

²⁷ Eric Fripp, Rowena Moffate and Ellis Willford (eds), *The Law and Practice of Expulsion and Exclusion from the United Kingdom: Deportation, Removal, Exclusion and Deprivation of Citizenship*, (1st edn, Bloomsbury Publishing 2015) 361- 362.

²⁸ *ibid*.

²⁹ Zainab Batul Naqvi, 'Coloniality, Belonging and Citizenship Deprivation in the UK: Exploring Judicial Responses' (2021) 31 *Social & Legal Studies* 515, 517-523.

³⁰ Tufyal Choudhury, 'The radicalisation of citizenship deprivation' (2017) 37 *Critical Social Policy* 225, 231.

³¹ BNA 1981 s 40(3); *Home Office* (n 4) 11.

³² *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC), [2020] Imm AR 1044.

³³ BNA 1981 s 40.

³⁴ *ibid*; McKinney (n 6) 17.

Home Office includes threats such as terrorism, serious organised crime or ‘unacceptable behaviour.’³⁵ For instance, serious organised crime and sexual offences by the members of the Rochdale grooming gang constituted ‘unacceptable behaviours’ where four members of the gang were deprived of their citizenship.³⁶ Under the BNA 1981 and the Special Immigration Appeals Commission (‘SIAC’) Act 1997, individuals can appeal deprivation decisions.³⁷ While the Tribunal deal with cases concerning fraud, appeal cases concerning national security or deprivation are dealt with by the SIAC subject to different procedures.³⁸ SIAC appeals may involve a closed evidence process, restricting access to appellant for national security reasons.³⁹ A special advocate is appointed independent from the appellant’s instructions to review the evidence and argue on behalf of the appellant where contact with the appellant is also prohibited.⁴⁰

After 9/11, citizenship policies were reviewed to prevent terrorist-affiliated citizens from returning and posing threats.⁴¹ In 2002, a White Paper was proposed to update deprivation procedures stating that even though the UK is one of the countries that have ‘responded successfully to diversity’, the community cohesion was weak, and therefore deprivation laws were required to be revisited to implement the significance of British citizenship.⁴² This was illustrated through the example of a dual national being involved in a terrorism or a war crime who obtained the British citizenship through concealment of facts.⁴³ It was promoted to implement deprivation powers as a means of condemning such crimes to reiterate the UK’s position regarding eligibility for citizenship.⁴⁴

As a result, the Nationality, Immigration and Asylum Act (‘NIA’) 2002 amended the BNA 1981 to include British-born citizens and the test was amended to include a person who ‘has done anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory’ and included forms of British nationality.⁴⁵ It was believed that this amendment resolved a discrimination issue between naturalised citizens and British-born citizens to achieve equality through levelling down, as the present law categorised naturalised citizenship as second class.⁴⁶ However, the Act did not provide a resolution, as it “simply creates a new form of discrimination between British citizens by birth who hold no other citizenship and British citizens by birth who happen to hold the nationality of a second country as well, maybe by birth, maybe by subsequent acquisition”.⁴⁷ Additionally, it raised the question of whether the Home Secretary being ‘satisfied’ was sufficient for deprivation decisions and whether ‘seriously prejudicial’ created uncertainty in the law.⁴⁸ However, it was asserted that particularly on national security cases, the subjective view of the Secretary of State is the best assessment and this does not facilitate arbitrary use of power, therefore maintaining the subjective wording.⁴⁹

This is illustrated in *Abu Hamza v Secretary of State for the Home Department*,⁵⁰ where a person was detained by the British forces for offences such as inciting violence accompanied with the request of extradition to the United States for further charges. Subsequently, he lost his Egyptian

³⁵ *Home Office* (n 4) 8.

³⁶ *Ahmed and Others (deprivation of citizenship)* [2017] UKUT 118 (IAC) [62].

³⁷ BNA 1981 s 40A(1); Special Immigration Appeals Commission Act 1997 (SIAC 1997) s 2B.

³⁸ BNA 1981 40A(2).

³⁹ The Special Immigration Appeals Commission (Procedure) Rules 2003 s 37.

⁴⁰ SIAC 1997 s 6(1); (n 38) s 34-36.

⁴¹ *Choudry* (n 29) 232-236.

⁴² *Home Office* (n 9) paras 4-10.

⁴³ *ibid.*, para 2.23.

⁴⁴ *ibid.*

⁴⁵ Nationality, Immigration and Asylum Act 2002 (NIA 2002) s 4.

⁴⁶ HL Deb 9 October 2002 vol 639 cols 264-352, 273; HL Deb 8 July 2002 vol 637 cols 503-506.

⁴⁷ HL Deb 9 October 2002 vol 639 cols 264-352, 276.

⁴⁸ *ibid.*

⁴⁹ *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2003] 1 AC 153 (HL) [26]; HL Deb 8 July 2002 vol 637 cols 503-506.

⁵⁰ *Abu Hamza v Secretary of State for the Home Department* [2003] UKSIAC SC_23_2003 (5th November 2010) [1]-[3].

citizenship, following his hateful and radical statements. This led to a deprivation order by the Home Secretary, although this was unsuccessful due to the appeal made to the SIAC on being stateless following the order being upheld.⁵¹ This case evidences how deprivation became a new method of penalisation, particularly towards dual nationals, even for offences involving hate speech, which raises concerns on discrimination.⁵² During the proceedings of Abu Hamza, the final deprivation order was unsuccessful as there was also a pending appeal; therefore, in 2004 the law was amended to enable deprivation orders to be applicable even with ongoing appeals.⁵³

The shift towards expansion in powers started from the Immigration, Asylum and Nationality Act 2006 as it changed the deprivation test back to ‘conducive to the public good’, thus lowering the threshold of deprivation following the 2005 London bombings.⁵⁴ This caused the same concerns from 2002 to be raised by the Joint Committee on the Human Rights (‘JCHR’), to question whether there are adequate safeguards to prevent arbitrary deprivation as it was illustrated that even verbal comments can constitute terrorism with the new test.⁵⁵ The subjective nature of deprivation grounds may increase arbitrariness, as decisions rest solely on the Home Secretary’s satisfaction, raising concerns about discrimination against dual nationals.⁵⁶ Thus, the committee declared that the new test has insufficient safeguards against arbitrary use of power and potential incompatibility with international law.⁵⁷ The government response followed the same arguments provided in 2002 discussions, and asserted that there are safeguards such as section 40(4) of the BNA 1981, which prevents statelessness, and further safeguards such as the Race Relations Act 1976 alongside section 44 of the BNA 1981.⁵⁸

A significant change can be seen from the IA 2014 section 66, as it amends the BNA 1981 safeguard to allow rendering an individual stateless resulting from a deprivation decision. The amendment followed the case of *Secretary of State for the Home Department v Al Jedda*,⁵⁹ where a naturalised British citizen lost his British citizenship under the BNA 1981 due to terrorism allegations. In his appeal, he argued that the decision made him stateless because his Iraqi citizenship was revoked due to Iraq’s prohibition on dual nationality upon his naturalisation, and questioned the Home Secretary’s authority to legislate on Iraqi nationality law. SIAC rejected the claim, affirming his Iraqi citizenship.⁶⁰ However, the Supreme Court (SC) overruled this, concluding that he was not an Iraqi citizen and the Home Secretary’s decision should consider whether any nationality was available to him.⁶¹ Therefore, the IA 2014 amendment clearly illustrates the relationship between the executive and law making as the executive’s broad powers enables for the law to be shaped by government policy.⁶²

⁵¹ *ibid* [22].

⁵² Philip Hensher, ‘It’s wrong to strip Abu Hamza of his citizenship’ (*The Independent*, 3 April 2003) <<https://www.independent.co.uk/voices/commentators/philip-hensher/it-s-wrong-to-strip-abu-hamza-of-his-citizenship-113481.html>> accessed 26 February 2025 *see also* Bobbie Mills, ‘Citizenship deprivation: How Britain took the lead on dismantling citizenship’ (*ENS*, 3 March 2016) <<https://www.statelessness.eu/updates/blog/citizenship-deprivation-how-britain-took-lead-dismantling-citizenship>> accessed 26 February 2025

⁵³ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 Sch 2 s 11.

⁵⁴ Immigration, Asylum and Nationality Act 2006 s 56; *McKinney* (n 18).

⁵⁵ Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters (third report)* (2005-06, HL 75, HC 561) para 161.

⁵⁶ *ibid* para 162.

⁵⁷ *ibid* para 164.

⁵⁸ *The government response cited in the appendix of: Joint Committee on Human Rights, Government Response to the Committee’s Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters (tenth report)* (2005-06 HL 114, HC 888) 16-18.

⁵⁹ *Al-Jedda v Secretary of State for the Home Department* [2008] UKSIAC SC_66_08 (18th July 2014) para 196.

⁶⁰ *ibid*.

⁶¹ *Al-Jedda v Secretary of State for the Home Department* [2013] UKSC 62, [2014] AC 253 (SC) [30] – [34].

⁶² David Anderson QC, ‘Citizenship Removal Resulting in Statelessness: First Report of the Independent Reviewer on the Operation of the Power to Remove Citizenship Obtained by Naturalisation from Persons Who Have No Other Citizenship’ (Independent Reviewer of Terrorism Legislation, 2016) para 3.16 <<https://ssrn.com/abstract=4833543>>.

The Nationality and Border Act ('NBA') 2022 allows citizenship deprivation without notice if correspondence details are unavailable or for security reasons.⁶³ It was assured that this Act does not impact the statutory right of appeal against deprivation decisions as appeal rights would be explained when contacted by the Home Secretary.⁶⁴ Over 300,000 signed a petition against the Bill, arguing that it enables arbitrary power and restricts appeals.⁶⁵ Notably, appeals have time limits where for notice of appeal for Tribunals changes from 14 to 28 days depending on the location of the individual meanwhile appeals to SIAC changes from 10 to 29 days and can even be 5 if an individual is detained.⁶⁶ In prior judgments, it has been emphasised that notice of a decision is required as the individual subject to the decision must be in a position to appeal.⁶⁷ However, the government argued that this could expose THE UK to security risks if an individual involved with terrorism was not deprived of their citizenship due to an inability to notify them.⁶⁸ Ultimately, judicial safeguards were introduced as an amendment where SIAC would consider the decisions of the Secretary not giving notice to an individual.⁶⁹

Case Study: Shamima Begum

Background

Shamima Begum, born and raised in the UK, held a 'provisional' Bangladeshi citizenship through her parents, where the citizenship would lapse if not taken up at the age of twenty-one in accordance to sections 5 and 14 of the Citizenship Act 1951. At age of fifteen, she travelled to Syria and married an ISIL member, joining the militant group. She was later found in a refugee camp by a journalist which led to widespread media coverage.⁷⁰ On 19 February 2019, the Home Secretary revoked her British citizenship, due to national security.⁷¹ Begum appealed to SIAC, challenging the deprivation order and the denial of her leave to enter (LTE) request to participate

⁶³ Nationality and Borders Act 2022 s 10.

⁶⁴ Home Office, 'Nationality and Borders Bill: Deprivation of Citizenship factsheet' (Policy Paper, 2023) < <https://www.gov.uk/government/publications/nationality-and-borders-bill-deprivation-of-citizenship-factsheet> > accessed 26 February 2025.

⁶⁵ UK Government and Parliament Petitions, 'Remove Clause 9 from the Nationality and Borders Bill' (*UK Government and Parliament Petitions* 29 May 2022) < <https://petition.parliament.uk/archived/petitions/601583> > accessed 27 February 2025. *see further examples:* Immigration Law Practitioners' Association (ILPA) 'ILPA's Briefing for the House of Lords Committee Stage for the Nationality and Borders Bill – Part 1: Nationality, Clause 9 Proposed Amendment – Notice of Decision to Deprive a Person of Citizenship' (ILPA Briefing 26 January 2022) < <https://ilpa.org.uk/nationality-law-in-the-nationality-and-borders-bill/> > accessed 27 February; Amnesty International and Protect for the Registration of Children as British Citizens (PRCBC) 'Nationality and Borders Bill House of Lords, Committee Stage Day 1, 27 January 2022 Deprivation of citizenship (Clause 9 and related amendments)' (Joint Amnesty UK and PRCBC Briefing 2022) < <https://www.amnesty.org.uk/resources/joint-amnesty-uk-and-prcbc-briefing-nationality-and-borders-bill-deprivation-citizenship> > accessed 27 February 2025; ENS, 'Nationality & Borders Bill, Part 1 Clause 9 'deprivation of nationality' & Clause 10 'stateless minors' Briefing for House of Lords Committee Stage, 27 January 2022' (ENS Briefing, 2022) < <https://www.statelessness.eu/sites/default/files/2022-01/ENS%20briefing%20-%20Nationality%20and%20Borders%20Bill%20-%20Jan%202022.pdf> > accessed 27 February 2025.

⁶⁶ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 s 19; HM Courts & Tribunals Service, 'Guidance: Apply to the Special Immigration Appeals Commission' (*Gov UK*, 27 April 2020) < <https://www.gov.uk/guidance/appeal-to-the-special-immigration-appeals-commission#:~:text=Time%20limits%20for%20applying,-You%20have%20a&text=If%20you're%20not%20allowed,can%20still%20take%20your%20case.> > accessed 27 February 2025.

⁶⁷ *R. (on the application of Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36, [2004] 1 AC 604 (HL) [26] (Lord Steyn).

⁶⁸ Letter from Baroness Williams to all peers, (25 January 2022).

⁶⁹ HC Deb 22 March 2022, vol 711 cols 179-306.

⁷⁰ Anthony Loyd, 'Shamima Begum: Bring me home, says Bethnal Green girl who left to join Isis' (*The Times*, 13 February 2019) < <https://www.thetimes.com/uk/politics/article/shamima-begum-bring-me-home-says-bethnal-green-girl-who-fled-to-join-isis-hgvqw765d> > accessed 28 February 2025.

⁷¹ *R (on the application of Begum) v Special Immigration Appeals Commission* [2021] UKSC 7, [2021] AC 765 (SC), [1] (Lord Reed) *see also* Home Office, 'Shamima Begum- Home Office statement' (*Gov UK, Home Office in the media*, 19 February 2019) < <https://homeofficemedia.blog.gov.uk/2019/02/19/shamima-begum-home-office-statement/> > accessed 28 February 2025.

in her appeal.⁷² SIAC concluded that she remained a Bangladeshi citizen under Bangladeshi law and was not stateless at the time of deprivation despite the arguments about lack of connections to the country.⁷³ It was held that her citizenship by descent was unaffected by the Bangladesh Citizenship Act and Government actions, where Begum therefore could request for a judicial review for Bangladesh's decision.⁷⁴

The Court of Appeal ('CA') vs the Supreme Court (SC)

The CA overturned this, holding that SIAC must assess the merits, not just legality, of the decision.⁷⁵ It ruled that Begum's presence was essential for a fair trial, emphasising that legal fairness should override security concerns, and her permission to leave to enter should be granted.⁷⁶ Subsequently, the SC overturned this decision, ruling that SIAC appeals are limited to judicial review and do not include full merit assessments.⁷⁷ It affirmed that national security assessments is with the executive, and procedural fairness does not immediately override security concerns.⁷⁸ Similarly, upholding extraterritorial human rights was held to be a discretionary exercise of the Home Secretary.⁷⁹

Begum later appealed, claiming trafficking victim status and alleging the Home Secretary breached human rights obligations.⁸⁰ SIAC acknowledged a 'credible suspicion' of trafficking but ruled it was not a mandatory consideration overriding national security, even though the state had failed its protective duties.⁸¹ In February 2024, the CA dismissed the appeal, reaffirming that mere suspicion was insufficient for a violation of human rights and national security considerations outweighed considerations on procedural fairness, the Equality Act 2010 and the proportionality of the decision.⁸² This was the last decision for Begum's litigations, as SC refused to hear the case.⁸³

Analysis

These rulings impact on the application of the BNA 1981, interpretation of statelessness, and human rights. Through *Begum*, we can infer that individuals can become *de facto stateless* without being afforded any considerations on their rights.⁸⁴ This decision may also bring a different perspective in the aspect of the best interests of a child, as the executive did not correlate Begum's age during the process, and prioritised national security over the individual human

⁷² *Shamima Begum v The Secretary of State for the Home Department* [2020] UKSIAC SC_163_2019 (7th February 2020) [3].

⁷³ *ibid* [71]; Ministry of Foreign Affairs, 'Bangladesh's position on the report of revoking Ms Shamima Begum's citizenship by the British Government in connection with her involvement in ISIS in Syria' (*Bangladesh National Portal*, 24 February 2019) <https://mofa.gov.bd/site/press_release/a5530623-ad80-4996-b0b4-f60f39927005> accessed 28 February 2025.

⁷⁴ (n 71) [122].

⁷⁵ *Begum v Secretary of State for the Home Department* [2020] EWCA Civ 918, [2020] 1 WLR 4267 (CA) [121]-[129] (Lord Justice Flaux).

⁷⁶ *ibid* [121].

⁷⁷ *Begum v Secretary of State for the Home Department* [2021] UKSC 7, [2021] AC 765 (SC) [133].

⁷⁸ *ibid* [134]-[135].

⁷⁹ *ibid* [131].

⁸⁰ *Shamima Begum v The Secretary of State for the Home Department* [2023] UKSIAC SC_163_2019 (22 February 2023) *see also* Azadeh Moaveni, 'Shamima Begum's is a story of trafficking, betrayal and now, it seems, a state cover-up' (*The Guardian*, 2 September 2022) <<https://www.theguardian.com/commentisfree/2022/sep/02/shamima-begum-trafficking-spy-home-office-citizenship>> accessed 1 March 2025.

⁸¹ *Shamima Begum v The Secretary of State for the Home Department* [2023] UKSIAC SC_163_2019 (22 February 2023) paras [224], [257].

⁸² *Begum v Secretary of State for the Home Department* [2024] EWCA Civ 152, [2024] 1 WLR 4269 (CA) [72] - [78], [122], [131], [135], [138].

⁸³ The Supreme Court, 'Permission to Appeal decision in the matter of *Shamima Begum (Appellant) v Secretary of State for the Home Department (Respondent)*' (UK Supreme Court, 2024) <<https://supremecourt.uk/news/pta-decision-shamima-begum>> accessed 1 March 2025.

⁸⁴ Andrea Birsall 'Enemy of the state': citizenship deprivation and the problem of returning foreign terrorist fighters' (2024) 18 Critical Studies on Terrorism 246.

rights, despite the credible suspicion over her trafficking.⁸⁵ United Nations (‘UN’) experts stressed that any question of ‘consent or voluntariness, or use of force, deception or coercion is irrelevant, where the victim of trafficking is a child.’⁸⁶ Although *de facto statelessness* was acknowledged, the court found this irrelevant as it was *not de jure statelessness*.⁸⁷ This overlooks the humanitarian implications on an individual, as Begum was refused entry to Bangladesh, preventing her from access to legal protections from any state. UN discussions recommends that *de facto* statelessness should be recognised as stateless *de jure*, emphasising that *de facto* stateless individuals also lack an effective nationality, therefore they should have the rights to be a citizen of a contracting state as a fundamental right.⁸⁸ The United Nations High Commissioner for Refugees (‘UNHCR’) encourages states to provide protection to *de facto* stateless persons.⁸⁹ However, *Begum* made it clear that UK immigration law inadequately addresses the unique challenges faced by the *de facto* stateless persons. The decision favours strict adherence to statutory exercise over the protection of individual rights, which brings questions on how future cases will be affected.

Furthermore, the judgment goes beyond setting a precedent for citizenship deprivation. It establishes that the executive is the key decision-maker when it comes to establishing thresholds to determine threats to national security, thus highlighting its importance in the constitutional concept of separation of powers.⁹⁰ Reforms granting the executive significant authority to classify individuals as dangerous and to strip them of their citizenship without providing adequate safeguards suggest the decreasing role of the judiciary, demonstrating that the executive have the power to use legislation to justify their decisions and even go as far as changing the law in the process.⁹¹ Consequently, citizenship deprivation has become a tool fit to grant the executive broad powers and these cases institutionalises the power over its citizen.⁹² Significantly, this depicts how politics of fear can be utilised to justify their decisions in the process of securitisation, even undermining principles of equality.⁹³ Using national security, the executive has the power to override democratic values and constitutional principles, particularly of an individual’s right to a fair trial.⁹⁴ The procedures of closed evidence further threatens the right to a fair trial and may violate the UKs treaty obligations.⁹⁵

There is no doubt that there is a risk of security when considering the possibilities of returning an individual associated with terrorism in their home countries. However, the risk assessment should depend on a case-by-case basis as at present individuals who have different degrees of conduct are receiving the same treatment.⁹⁶ In a domestic prosecution, criminals have the

⁸⁵ Prabhat, Devyani, ‘The Begum Case: Why Ministerial Discretion Precludes Human Rights Issues’ (*VerfBlog*, 16 March 2023) <<https://verfassungsblog.de/the-begum-case-why-ministerial-discretion-precludes-human-rights-issues/>> accessed 23 June 2025.

⁸⁶ United Nations Human Rights Office of the High Commissioner (UNHCR), ‘UN experts deplore continuing failures of protection for Shamima Begum’ (UN Press Release, 6 March 2024) <<https://www.ohchr.org/en/press-releases/2024/03/un-experts-deplore-continuing-failures-protection-shamima-begum#:~:text=%E2%80%9CHuman%20trafficking%20is%20an%20international,of%20trafficking%20is%20a%20child%E2%80%9D.>>> accessed 1 March 2025.

⁸⁷ (n 82) [100]–[102].

⁸⁸ Hugh Massey, ‘UNHCR and De Facto Statelessness’ (UNHCR Legal and Protection Policy Research Series, 2010, LLPR/2010/01) <<https://www.unhcr.org/uk/media/no-16-unhcr-and-de-facto-statelessness-hugh-massey>> accessed 2 March 2025.

⁸⁹ UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, (UNHCR, 2014) para 124.

⁹⁰ Ayesha Riaz, ‘Increasing the Powers of the Secretary of State for the Home Department to Strip Individuals of their British Citizenship: R (on the application of Begum) v SSHD’ (2023) 86 the Modern Law Review 1517, 1578.

⁹¹ *Birsall* (n 84) 253.

⁹² *ibid* 252.

⁹³ *ibid*, 251.

⁹⁴ *ibid*, 258.

⁹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights as amended) (ECHR) art 6.

⁹⁶ Erika Brady, ‘Future security threats arising from the UK’s deprivation of citizenship: a model to understand the human rights-security risk landscape’ (2024) 17 Critical Studies on Terrorism 757, 771–772.

opportunity to defend themselves, while this is not the case for individuals such as Begum.⁹⁷ Citizenship deprivation has become a counter-terrorism tool preferred over using the UK's domestic criminal justice system for dual nationals. This may be regarded as discriminatory if we ask the question what would happen if an individual with only British heritage committed the same crimes abroad.⁹⁸ Moreover, *Begum* illustrates how the principle of 'effective nationality' is being applied to establish a lack of meaningful connection to the UK for individuals such as Begum, through the *Nottebohm* principle.⁹⁹ Under this principle, the nationality of an individual was ascertained through their genuine connection to a state.¹⁰⁰ This is being used, combining it with immigration law where states question whether someone's nationality is effective, resulting in decisions made by political influence rather than legal principles.¹⁰¹ Similarly, the UK government claimed that Begum's actions opposed British values. Although there is no strict definition as what is meant by British values, it shows that citizenship is politically shaped and can be contested, which raises concerns about how nationality is defined and whether it is being applied fairly or selectively.¹⁰²

Although *Begum* concerned national security, the judgments can extend to fraud cases, restricting the appellate tribunal's ability to review deprivation decisions fully.¹⁰³ The CA considered whether the judgments in *Begum* would apply to fraud-based citizenship deprivation appeals when it comes to whether SIAC can conduct merits-based reviews.¹⁰⁴ The Court confirmed that SIAC can make factual findings but must respect the Home Secretary's national security assessments.¹⁰⁵ However, uncertainty remains regarding section 40(3) fraud cases, particularly in the First-Tier tribunal appeals on determining the scope of merits-based appeals; which can create an unequal system where some deprivation orders are more open for challenge compared to others.¹⁰⁶

In conclusion, the discussion above reveals that UK's deprivation laws are deeply influenced by its colonial history and has evolved to reflect exclusionary policies through the expansion of executive powers. *Begum* exemplifies this shift, as it demonstrates the expansive powers vested in the executive without judicial oversight, raising concerns about fundamental rights, statelessness and discrimination which will be discussed further.

Ethical and human rights challenges

Although citizenship deprivation is categorised as an administrative procedure, its effects go beyond the individual, impacting the very concept of citizenship itself and international relations. Following legislative reforms, this section critically explores the UK's deprivation of citizenship powers through analysing political ethics, key human rights law and international instruments to consider the implications of prioritisation of national security in nationality laws. Significantly, it also analyses the adequacy of international legal standards on issues of nationality and protection of statelessness.

'The right to have rights'

⁹⁷ *ibid.*

⁹⁸ *Birsall* (n 84).

⁹⁹ Kim McGuire, 'Jus Sanguinis, "Effective Nationality" and Exclusion: Analysing Citizenship Deprivation in the UK.' (2022) 6 *Genealogy* 1, 1-3.

¹⁰⁰ *ibid.*, 2.

¹⁰¹ *ibid.*

¹⁰² *ibid.*, 7.

¹⁰³ Edward Arash Abedian, 'The *Begum* Question: The Scope of Deprivation of Citizenship Appeals in Cases of Fraud' (2023) 28 *Judicial Review* 164, 169.

¹⁰⁴ *U3 v Secretary of State for the Home Department* [2023] EWCA Civ 811, [2024] KB 433 (CA), 442.

¹⁰⁵ *ibid* [174].

¹⁰⁶ *Abedian* (n 103) 176-177.

The Universal Declaration of Human Rights ('UDHR') is the first international document to establish that all humans should have fundamental rights by virtue of their humanity.¹⁰⁷ The right to a nationality is also included, alongside prohibition of arbitrary citizenship deprivation.¹⁰⁸ While not legally binding, the UDHR, and other international treaties, remain as a fundamental bedrock in the creations of binding international treaties.¹⁰⁹

Arendt famously argued that rights belonging to individuals based on their humanity is 'paradoxical'.¹¹⁰ Instead, she argues that fundamental rights are provided by 'right to have rights' through political membership.¹¹¹ Without citizenship, one's opinions and actions lose political meaning, leading to social exclusion.¹¹² Thus, political participation is viewed as the core of citizenship.¹¹³ Lord Wilson acknowledged this, by stressing the 'evil of statelessness' to illustrate that citizenship is the connector of all rights.¹¹⁴ Since Arendt, her theory has been expanded by scholars who argue that political participation is not sufficient without meaningful social inclusion through being recognised as an equal member in the society.¹¹⁵ On the other hand, the government has repeatedly emphasised that British citizenship is a privilege rather than a right.¹¹⁶ This reflects the fundamental relevance of Arendt's theory to understand the dimensions of citizenship deprivation, where citizenship becomes the condition to exercise rights.

Application of the European Convention on Human Rights ('ECHR') and the balancing of rights and security

Although the ECHR does not identify a right to nationality, other Convention rights may be engaged by citizenship deprivation (private and family life, freedom from torture and the right to a fair trial). Since 2002, the JCHR has raised concerns about potential incompatibilities with the ECHR.¹¹⁷ These concerns centre on fairness, discrimination and extraterritorial application of rights. Considering that the legal framework has remained unchanged, this signals the possible tension between UK's international obligations and domestic law.

Concerns arise under article 6 ECHR due to the use of closed evidence proceedings in SIAC appeals.¹¹⁸ This raises questions whether courts provide sufficient procedural safeguards. *AF (No 3)*¹¹⁹ established that individuals must be provided with sufficient information for effective representations and ensure a fair trial particularly in merits-based appeals.¹²⁰ As *Begum* illustrated that deprivation appeals are judicial reviews, this suggests that there are no domestic safeguards available.¹²¹

¹⁰⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 5.

¹⁰⁸ *ibid* art. 15.

¹⁰⁹ *see example*: International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 24(3).

¹¹⁰ *Arendt* (n 1) 381.

¹¹¹ *ibid* 387-388; Alison Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law* (1st edn, Oxford University Press 2012) 67.

¹¹² *Arendt* (n 1) 387-388.

¹¹³ *Kesby* (n 111) 67.

¹¹⁴ *Al-Jedda v Secretary of State for the Home Department* [2013] UKSC 62, [2014] AC 253 (SC) [12] *citing* *Perez v Brownell*, 356 US 44, 64 (1958), (Warren CJ).

¹¹⁵ *Kesby* (n 111) 85-90.

¹¹⁶ HL Deb 12 February 2025, vol 843 cols 1252-1256 *see also* Alice Ross and Patrick Galey, 'Home Secretary pushes through 'controversial' powers to make people stateless' (*The Bureau of Investigative Journalism*, 30 January 2014) <<https://www.thebureauinvestigates.com/stories/2014-01-30/home-secretary-pushes-through-controversial-powers-to-make-people-stateless>> accessed 14 April 2025.

¹¹⁷ Joint Committee on Human Rights (JCHR), *Legislative Scrutiny: Immigration Bill (second Report)* (2013-14, HL 142, HC 1120), paras 4-81.

¹¹⁸ *ibid* paras 72-77.

¹¹⁹ *Secretary of State for the Home Department v AF (No 3)* [2009] UKHL 28, [2010] 2 AC 269 (HL) [11].

¹²⁰ *ibid*.

¹²¹ (n 71) [91] – [96].

Beyond procedural concerns, deprivation decisions can interfere with private and family life, under article 8 ECHR.¹²² Although the government argues that deprivation decisions are proportionate given the high thresholds,¹²³ this remains questionable. The test ‘conducive to public good’ lowers the threshold with its ambiguity, widening the scope of application compared to previous tests.¹²⁴ Deprivation practices may also breach article 14 ECHR (freedom from discrimination) as it is primarily applied to dual nationals.¹²⁵ The government argues that this approach does not engage article 14 as it is based on a legitimate objective of protecting state interests.¹²⁶ Arguably, this illustrates the existence of a two-tier citizenship, undermining citizenship equality.¹²⁷

Significantly, deprivation decisions affecting individuals abroad may raise issues under articles 2, 3 and article 8 ECHR.¹²⁸ The JCHR argues that ECHR must be applicable regardless of physical location.¹²⁹ However, the UK maintains that these rights would not be engaged as the extent of these rights are strictly territorial.¹³⁰ In *K2 v UK*,¹³¹ the courts accepted that the UK had no jurisdiction abroad and there is no obligation to facilitate domestic appeals, despite the article 8 and 14 claims. The only exception under article 8 would be if the deprivation is directly impacting the individual’s family in the UK.¹³² The overall reasoning by the government has been described as ‘wishful legal thinking’, because deprivation is a deliberate action that directly impacts the rights of an individual.¹³³ While memorandum of understandings is suggested as protective measures, their effectiveness is limited, particularly when recipient countries have poor human right reputations.¹³⁴

In *Al-Skeini v UK*,¹³⁵ jurisdiction abroad was limited to physical or armed state control over a particular territory, thus, non-applicable to deprivation cases. In contrast, the ECHR was applied abroad in *Soering v UK*,¹³⁶ where domestic extradition directly risked an individual to the threat of execution. The CA recognised *Soering* in *R v Special Adjudicator*, holding that ECHR may apply abroad if a domestic decision results in a foreseeable ECHR violation.¹³⁷ It is argued that since deprivation decisions are made within the UK and contributes to exposure to potential human right valuations, *Soering* should apply as well.¹³⁸ Arnell refers to ‘functional jurisdiction’, where states maintain their legal control over citizens by virtue of their nationality.¹³⁹ Nonetheless

¹²² *Andrei Karashev and family v Finland* App no 31414/96 (ECtHR, 12 January 1999); *Genovese v Malta* App no 53124/09 (ECtHR, 11 January 2012); *Usmanov v Russia* App no 43936/18 (ECtHR, 22 March 2021).

¹²³ Home Office, ‘Immigration Bill European Convention on Human Rights Supplementary Memorandum by the Home Office’ (2014) para 13

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/276660/Deprivation_ECHR_memo.pdf> accessed 20 March 2025.

¹²⁴ see section: *The Current Expansion of Power*.

¹²⁵ (n 117) para 50-53.

¹²⁶ (n 123) para 14.

¹²⁷ HC Deb 11 February 2014, vol 575, col 255WH see also *Choudry* (n 29) 235.

¹²⁸ *JHCR* (n 117) pg 4; Lucia Zedner, ‘Citizenship Deprivation, Security and Human Rights’ (2016) 18 *European Journal of Migration and Law* 222, 228- 231.

¹²⁹ *JHCR* (n 117) p 4.

¹³⁰ (n 123) para 16.

¹³¹ *K2 v the United Kingdom* App no 42387/13 (ECtHR, 7 February 2017) [57], [71].

¹³² (n 123) para 13.

¹³³ Guy S Goodwin-Gill, ‘Deprivation of Citizenship resulting in Statelessness and its Implications in International Law’ (Opinion, 12 March 2014) para 26 <

<https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/gsgg%202-deprivationcitizenshipintlawfinal.pdf>> accessed 25 March 2025 see also Guy S Goodwin-Gill, ‘Mr Al-Jedda,

Deprivation of Citizenship, and International Law’ (revised draft of a paper presented at a Seminar at Middlesex University, 14 February 2014) < <https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/GSGG-DeprivationCitizenshipRevDft.pdf>> accessed 25 March 2025.

¹³⁴ Zedner (n 128), 230.

¹³⁵ *Al-Skeini and others v the United Kingdom* App no 55721/07 (ECtHR, 7 July 2011) .

¹³⁶ *Soering v the United Kingdom* App no 14038/88 (ECtHR, 7 July 1989).

¹³⁷ *R. (on the application of Ullah) v Special Adjudicator* [2004] UKHL 26, [2004] 2 AC 323 (HL) [10].

¹³⁸ Paul Arnell, ‘The legality of the citizenship deprivation of UK foreign terrorist fighters’ (2020) 21 *ERA Forum* 395, 402-403.

¹³⁹ *ibid* 403.

in Begum, extraterritorial application was rejected as she was already abroad.¹⁴⁰ This implies that a deprivation order to an individual who is already abroad is not similar to the direct extradition to a jurisdiction with the death penalty, as in Soering. Thus, it is worth questioning the territorial scope of the ECHR when deprivation of citizenship affects an individual's access to state protections, and exposes them to potential harm. This raises broader questions about the extent to which fundamental human rights should apply, and whether they can extend to individuals associated with terrorism. There is no publicly available data revealing the number of deprivation cases to individuals abroad since 2014, which creates difficulty assessing whether appeals from abroad are successful,¹⁴¹ with Begum being the most notable unsuccessful case. This may suggest neo-colonial tendencies, modernising exile, as the focus on deprivation powers to individual abroad appear to mitigate any human rights claim that may arise within UK.¹⁴²

Other international regulations on citizenship

The UK has signed both the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention).¹⁴³ While the 1954 Convention provides definitions and protections regarding statelessness, the 1961 Convention imposes obligations on states to prevent statelessness through prohibition of citizenship deprivation leading to statelessness.¹⁴⁴ However, this is subject to exceptions, as it permits states to retain their right to render statelessness when a person 'has conducted himself in a manner seriously prejudicial to the vital interests of the State'.¹⁴⁵ The UK has claimed on several occasions that all of their legislative reforms are in line with both conventions, even with the IA 2014 allowing individuals to be rendered stateless through relying on the 1961 Convention exception.¹⁴⁶ However, this might be problematic because the UK removed this power through both NIAs, and later regained power through the IA 2014.¹⁴⁷ Thus, one could argue that the right to retain may be indefinite; however, the reintroduction of such power may fall outside of this scope and be unlawful, as it could contradict the Convention's main purpose of reducing statelessness.¹⁴⁸

Particularly in relation to the NBA 2022, the UNHCR has raised concerns regarding the provision on revoking citizenship without notice, stating that such measure may breach the UK's obligations under the refugee conventions.¹⁴⁹ It claims that NBA 2022's requirement to find a first safe country to enter is not a principle deriving from international law, which shifts disproportionate responsibility onto poorer nations and is against the cooperative nature of the refugee conventions.¹⁵⁰ This is relevant to deprivation cases where individuals are facing statelessness, raising implications for refugee status and protection resulting from the deprivation of citizenship.

Despite these conventions, significant gaps still exist in international law to accommodate the practicalities of statelessness.¹⁵¹ A stateless person is someone who is not considered as a national

¹⁴⁰ *Begum* (n 82) [129].

¹⁴¹ *JCHR* (n 117) para 20.

¹⁴² *Naqvi* (n 29) 525.

¹⁴³ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (the 1954 Convention); Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (the 1961 Convention).

¹⁴⁴ 1961 Convention, art 8(1).

¹⁴⁵ 1961 art 8(2), 8(3).

¹⁴⁶ Explanatory notes to the Immigration Act 2014 para, 406.

¹⁴⁷ *Arnell* (n 138) 406-407.

¹⁴⁸ *ibid.*

¹⁴⁹ UNHCR, 'Updated Observations on the Nationality and Borders Bill, as amended' (January 2022) para 5 <<https://www.unhcr.org/uk/media/unhcr-updated-observations-nationality-and-borders-bill-amended>> accessed 1 April 2025.

¹⁵⁰ *ibid.*, para 9.

¹⁵¹ Will Merry, 'Do the Recent Changes in the UK's Approach to the Deprivation of Citizenship and Statelessness Constitute an Unacceptable Attack on British Citizenship?' (2017) 2017 BLR 165, 170.

by any State under the operation of its law, *de jure* statelessness, under the 1954 Convention.¹⁵² *De jure* statelessness excludes *de facto* statelessness, where individuals who have legal citizenship status, but are unable to enjoy their rights of citizenship.¹⁵³ Therefore, it has been recommended to expand the responsibilities of United Nations ('UN') agencies regarding *de facto* statelessness by prioritising policy work and strengthening country operations.¹⁵⁴

In *Pham v UK*,¹⁵⁵ the UK reaffirmed their focus on strict legal interpretations of the 1954 Convention, by only recognising *de jure* statelessness. This strict application also extended to *Begum*, as practical possibilities of being admitted was not considered; thus they did not assess *de facto* statelessness.¹⁵⁶ These examples indicate how citizenship deprivation may constitute a 'de facto sanction' on individuals abroad; where they are in a legal gap because no protections are afforded to them from the 1954 Convention and there are no state obligations to address this protection gap.¹⁵⁷ *Pham* and *Begum* illustrates Arendt's notion on fragility of rights, where rights are dependent on recognition from a state, highlighting the connection between rights protection and citizenship. Furthermore, customary international law may be infringed by the UK, because deprivation decisions made abroad inevitably affect the receiving state, even damaging the UK's international relations.¹⁵⁸ A country has an obligation to readmit its own nationals if they are expelled or deported from another country and citizenship deprivation only for deportation is impliedly prohibited.¹⁵⁹ Arguably, any state is entitled to dismiss deprivation decisions and return that person to the UK, and failure to readmit individuals could violate the sovereignty of the other country.¹⁶⁰ Subsequently, the UK has responded by refusing the existence of customary obligations in respect of re-admission, even though the UK has acknowledged the duty to admit denationalized citizens in previous matters.¹⁶¹ Overall, this indicates how the UK is selectively applying international obligations with restrictive interpretations to preserve national interests where human rights are positioned in the background. These imbalances are prominent in cases involving national security.

Security over human rights

As seen above, imbalances in the application of international obligations suggest that deprivation powers are dominantly used against individuals abroad, particularly due to national security. This may suggest that the rest of the world is an open ground for the UK to expel unwanted citizens.¹⁶² This may not be satisfactory, as the threat they pose will not reduce, because British interests are not refined to territorial borders.¹⁶³ Globalisation has led to terrorist activities to spread virtually, expanding the reach of these groups.¹⁶⁴ Consequently, other countries have criticised the UK's

¹⁵² *The 1954 Convention* (n 143) art 1.

¹⁵³ *UNHCR* (n 89).

¹⁵⁴ *Massey* (n 88) 61-66.

¹⁵⁵ *Pham v Secretary of State for the Home Department* [2015] UKSC 19, [2015] 1 WLR 1591 (SC) [21].

¹⁵⁶ *Begum* (n 82) [100] – [102].

¹⁵⁷ Christophe Paulussen, 'Stripping foreign fighters of their citizenship: International human rights and humanitarian law considerations' (2021) 103 *International Review of the Red Cross* 605, 608.

¹⁵⁸ Guy S Goodwin-Gill, 'Deprivation of Citizenship resulting in Statelessness and its Implications in International Law' (Opinion, 12 March 2014) para 26 < <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/gsgg%20deprivationcitizenshipintlawfinal.pdf> > accessed 25 March 2025.

¹⁵⁹ *ibid*, paras 21-24.

¹⁶⁰ *ibid*, para 24.

¹⁶¹ Foreign Commonwealth Office and Home Office, 'Government response to Goodwin-Gill's paper, Mr Al-Jedda, Deprivation of Citizenship and International Law' (9 May 2014) para 12-13. < https://data.parliament.uk/DepositedPapers/Files/DEP2014-0722/2014-05-09_Government_response_to_Guy_Goodwin-Gill_paper.pdf > accessed 25 March 2025 *see also evidence of customary obligations* Guy S Goodwin-Gill, 'Deprivation of Citizenship, Statelessness and International Law: More Authority (if it were needed...)' (5 May 2014) < <https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/GSGG-DeprivationCitizenship-MoreAuthority.pdf> > accessed 25 March 2025.

¹⁶² *Naqvi* (n 29) 525.

¹⁶³ *Zedner* (n 128) 240.

¹⁶⁴ *ibid*.

current deprivation practice as uncooperative, for shifting responsibility onto other nations, which may create tension in UK's international relations.¹⁶⁵ Importantly, the UK is signatory to various treaties that obligates states to either extradite or prosecute individuals involved with international crimes.¹⁶⁶ Thus, depriving citizenship due to national security instead of investigating and prosecuting war crimes committed by their nationals, weakens accountability and may violate state obligations alongside human rights law obligations.¹⁶⁷

Instead, state power is being conceptualised to establish citizenship deprivation as a 'penal sanction' to crimes against national security.¹⁶⁸ While domestic criminal justice gives the opportunity to criminals in order to defend themselves and be subject to high thresholds, individuals who are associated with terrorist groups abroad do not have the same protection.¹⁶⁹ This does not mean that individuals affiliated with terrorist groups are excluded from all legal protections, as they may still be involved in armed conflicts, where Article 3 of the Geneva Conventions provides fundamental protections for such individuals and implies state responsibility.¹⁷⁰

Realistically, it is impossible to deny that individuals involved in terrorist groups may pose a risk. However, generalising this risk across all individuals creates disproportionate outcomes where all individuals associated with these groups receive the same treatment, even if they are not directly engaged in violence.¹⁷¹ This contrasts with domestic criminal justice systems which rely on tailored prosecutorial and security measures.¹⁷² This strict view may even pose risks to individuals who may have been victims, where reparation can be appropriate instead.¹⁷³ For example, repatriation is increasingly becoming important in European countries such as the Netherlands, where courts are increasingly holding governments accountable for welfare and fair trial processes for individuals abroad.¹⁷⁴ Although repatriating nationals is not obligatory, positive obligations can exist if the state inaction amounts to '*de facto* exile'.¹⁷⁵ These approaches highlight the significance of repatriation of individuals for re-integration in the community, particularly women and children, considering the deteriorated conditions of many camps. Not repatriating certain individuals may prolong the risks of new humanitarian law violations, and

¹⁶⁵ Rosalba O'Brien, 'Canada slams UK decision to 'off-load' Islamist fighter' (*Reuters*, 19 August 2019) <<https://www.reuters.com/article/us-canada-britain-islamist/canada-slams-uk-decision-to-off-load-islamist-fighter-idUSKCN1V80NM/>> accessed 26 March 2025.

¹⁶⁶ e.g.: International Convention for the Suppression of Terrorist Bombings, (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 art. 4, 5, 6. *see further examples discussed in* (n 149) para 29-36.

¹⁶⁷ (n 158) para 36.

¹⁶⁸ Sandra Mantu, 'Citizenship in times of terror: citizenship deprivation in the UK' (ECPR Standing Groups Conference, Warsaw 29 March - 2 April 2015) page 3. <

https://www.researchgate.net/publication/301520946_Citizenship_in_times_of_terror_citizenship_deprivation_in_the_UK> accessed 2 April 2025.

¹⁶⁹ Brady (n 96).

¹⁷⁰ Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, Common Art 3; Paulussen (n 157).

¹⁷¹ Brady (n 96).

¹⁷² *ibid.*

¹⁷³ OHCHR, 'Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (Consultation meeting with Experts on the return of "Foreign Fighters" and their families to Europe organised by the Council of Europe Commissioner for Human Rights, Paris, 25 September 2019) pg 3 <

<https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/PositionSRreturnsFFsOct2019.docx>> accessed 14 April 2025.

¹⁷⁴ Letta Tayler, 'The Netherlands Joins in Repatriations from Northeast Syria' (*Human Rights Watch*, 3 November 2022)

< [https://www.hrw.org/news/2022/11/03/netherlands-joins-repatriations-northeast-syria#:~:text=Care%20for%20Returned%20Children%20Is,ISIS\)%20suspects%20and%20family%20members.](https://www.hrw.org/news/2022/11/03/netherlands-joins-repatriations-northeast-syria#:~:text=Care%20for%20Returned%20Children%20Is,ISIS)%20suspects%20and%20family%20members.)>

accessed 3 April 2025; Tanya Mehra, 'European countries are being challenged in court to repatriate their foreign fighters and families' (*International Centre for Counter-Terrorism*, 7 November 2019)

<<https://icct.nl/publication/european-countries-are-being-challenged-court-repatriate-their-foreign-fighters-and>> accessed 3 April 2025.

¹⁷⁵ *HF and others v France* App no. 24384/19 and 44234/20 (ECtHR, 14 September 2022) (Judge Pavli and Schembri Orland).

exclusion may lead to further radicalisation.¹⁷⁶ However, the UK emphasises the difficulty of prosecuting individuals abroad in domestic settings due to difficulties of obtaining sufficient evidence to secure a conviction.¹⁷⁷ Accommodating these individuals also incur public costs.¹⁷⁸ Nonetheless, it is argued that human rights should not be ignored considering the relatively few number of these cases.¹⁷⁹ Domestic measures might still be effectively used to establish proportionate measures, while still preserving national security through re-integration of repatriated individuals.¹⁸⁰

Another important finding is that citizenship deprivation may be counterproductive, arguing that short-term policy decisions are more likely to lead to long-term security issues which can ultimately undermine human rights.¹⁸¹ Moreover, because deprivation mainly targets ethnic minorities, this may lead to marginalisation, which is one of the causes of radicalisation.¹⁸² Penalising individuals through immigration law for their crimes creates a social fragmentation indicating foreigners pose greater threats and are undeserving of equal protection as mono-citizens.¹⁸³ Consequently, this creates suspicions towards ethnic minorities within the community, contributing further to marginalisation.¹⁸⁴ Significantly, *Begum* highlights the role of the media in depicting certain individuals as threats to social order as a method of securitisation, which leads to dehumanisation and justification of deprivation decision despite concerns on being trafficked and victimised as a minor.¹⁸⁵ The media strategy legitimises the exclusion of dual nationals, thereby fostering wider support for citizenship deprivation policies that enables expansion of state powers.¹⁸⁶

Nonetheless, the gaps in international law plays a significant role in the UK adopting such citizenship policies. International law itself creates two conceptions of citizenship, where citizenship is either seen as an equality or a privilege, as undermining equality may be proportionate in exceptional measures.¹⁸⁷ With such a dilemma, it is arguable whether real protection can be ensured. This is argued through exploring the denial of voting rights for prisoners, where their social and political standing in the community is undermined, indicating how laws such as UDHR is insufficient in practice.¹⁸⁸ This approach also reflects on to stateless individuals as the current law does not consider broad notions such as their social standing and instead views it as a legal issue focused on whether an individual is holding nationality or not.¹⁸⁹ If human rights existed by virtue of only humanity, then in cases of *de facto* statelessness the equalities should exist, which is not the case in current practice.¹⁹⁰

¹⁷⁶ Brady (n 96).

¹⁷⁷ Joanna Dawson, 'Shamima Begum: What powers exist to deal with returning foreign fighters?' (*House of Commons Library, Insight*, 20 February 2019) < <https://commonslibrary.parliament.uk/shamima-begum-what-powers-exist-to-deal-with-returning-foreign-fighters/> > accessed 4 April 2025.

¹⁷⁸ Merry (n 151) 174.

¹⁷⁹ *ibid*.

¹⁸⁰ Brady (n 96) *see also* Home Office, *CONTEST: The United Kingdom's Strategy for Countering Terrorism 2023* (CP 903, 2023).

¹⁸¹ Brady (n 96) 772- 775.

¹⁸² Michaela Pfundmair and others, 'How social exclusion makes radicalism flourish: A review of empirical evidence' (2024) 80 *Journal of Social Issues* 341, 359.

¹⁸³ Zedner (n 128) 241.

¹⁸⁴ McGuire (n 99), 7.

¹⁸⁵ Milly Williamson and Gholam Khiabany, 'The British state, citizenship rights and gendered folk devils: The case of Shamima Begum' (2025) 28 *European Journal of Cultural Studies* 345, 346-350.

¹⁸⁶ *ibid* 351.

¹⁸⁷ Kesby (n 111) 90-91.

¹⁸⁸ *ibid* 67-91.

¹⁸⁹ *ibid* 87.

¹⁹⁰ *ibid* 86.

Importantly, all these elements suggest the existence of erosion of the rule of law due to the broad powers the UK has adopted.¹⁹¹ While, negativity is expected towards individuals who have been involved with terrorism, the impact of these policies goes beyond *Begum*, as this illustrates citizenship has become a privilege, ultimately coming back to Arendt's concern at the start of the discussion above. Therefore, it is significant for current laws to be reassessed to adhere to international human right notions and for citizenship to entail beyond legal governance.

Globalisation and reconsidering the UK's approach to citizenship

This section examines how deprivation powers relate to broader notions of global citizenship norms by examining post-nationalism and the evolving tension between state sovereignty and globalisation. Globalisation is a layered phenomenon with political, economic, socio-cultural and technological aspects.¹⁹² Inevitably, these layers impact citizenship by blurring conventional boundaries of identity and belonging with the rise of global mobility, capital flow and digital connectivity.¹⁹³ As individuals engage with different cultures simultaneously, this challenges the cohesion of communities and raises questions about the meaning of citizenship.¹⁹⁴

Additionally, multinational organisations such as the World Bank and their impact on economic globalisation reinforced the notion that state sovereignty is diminishing when considering the influence of these organisations on domestic economic policies.¹⁹⁵ The effects of economic globalisation have also reshaped the acquisition of citizenship. In countries such as Malta and Portugal, citizenship has been commercialised through 'investor visas' that fast-track wealthy individuals to residency or citizenship.¹⁹⁶ Tying citizenship to wealth rather than to notions of identity or democratic participation reflects a broader shift towards using citizenship as an exclusionary tool.¹⁹⁷ With deprivation policies potentially risking the creation of a second-class citizenship, this marketisation arguably supports the perception that citizenship is becoming a privilege.

Nationality extends beyond political boundaries and legal status; it represents identity and history.¹⁹⁸ Thus, citizenship definitions reveal how states perceive diversity: fixed criteria tend to frame it as a threat whereas flexible definitions embrace diversity as a sign of a state's adaptability.¹⁹⁹ Gradually, citizenships are failing to deliver core democratic values such as

¹⁹¹ Colin Yeo, 'Bad cases make bad law: the unintended consequences of denaturalising bad guys' (*free movement*, 6 February 2023) < [¹⁹² Judith Gans, 'Citizenship in the Context of Globalization' \(Immigration Policy Working Papers, 2005\) pg 1 < \[https://udallcenter.arizona.edu/sites/default/files/2021-09/Citizenship_and_Globalization.pdf\]\(https://udallcenter.arizona.edu/sites/default/files/2021-09/Citizenship_and_Globalization.pdf\)> accessed 10 April 2025.](https://freemovement.org.uk/bad-cases-make-bad-law-the-unintended-consequences-of-denaturalising-bad-guys/#:~:text=Bad%20cases%20make%20bad%20law%3A%20the%20unintended%20consequences%20of%20denaturalising%20bad%20guys,-Table%20of%20Contents&text=The%20power%20to%20denaturalise%20a,until%20as%20late%20as%202002.> accessed 4 April 2025.</p>
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¹⁹³ *ibid.*

¹⁹⁴ Gans (n 192).

¹⁹⁵ David Held and others, 'Globalization' (1999) 5 *Global Governance* 483, 489.

¹⁹⁶ Residency Malta Agency, 'Malta Permanent Residence Programme' (*Government of Malta*, 2025) < <https://residency.malta.gov.mt/the-mprp-programme/>> accessed 14 April 2025; Ministry of Foreign Affairs, 'RPI-Residency Permit for Investors' (*República Portuguesa*, 2020) < <https://vistos.mne.gov.pt/en/ari-residency-permit-for-investors>> accessed 14 April 2025. *Kindly note that this section reflects the law on golden visas as it stood at the time of 16 April 2025. Subsequent developments as per the case C-181/23 European Commission v Republic of Malta [2025] ECLI:EU:C:2025:283 where the court found that these schemes situate nationality as a commodity which may alter the legal direction towards golden visas in the EU.*

¹⁹⁷ Ayelet Shachar, 'The Marketization of Citizenship in an Age of Restrictionism' (2018) 32 *Ethics & International Affairs* 3, 10.

¹⁹⁸ Gans (n 192) 3.

¹⁹⁹ *ibid.*, 4.

equality, freedom and political engagement.²⁰⁰ Therefore, an ethical notion of ‘global citizenship’ has developed as a form of moral responsibility rather than a binding legal status, defining global citizens as individuals who uphold values such as social justice and human rights universally although interpretations of social justice and rights may vary widely across cultures and legal systems.²⁰¹

International law increasingly recognises these values and treats citizenship as a matter of individual rights, gradually limiting state sovereignty.²⁰² With global organisations and international human rights frameworks, a universal sense of belonging is created.²⁰³ Consequently, citizenship becomes the core element where states exercise their sovereignty, through controlling acquisition and deprivation of citizenship.²⁰⁴ Notably, the shortcomings of international law discussed above allows for domestic reassertions of sovereignty through deprivation powers.

The European Union (EU) and Post-nationalism: a new citizenship model

These global developments engaged the ideas of post-nationalism, where individuals are active holders of rights across borders, not just passive members bound to their state; as national state is no longer the only source for an identity.²⁰⁵ This is inspired by the creation of the EU and the EU citizenship.²⁰⁶ However, it would be unrealistic to assume that post-nationalism seeks to replace sovereign nationality entirely, as it is more of a reflection of institutional transformation of citizenship.²⁰⁷

Under EU law, every national of a Member State is also a EU citizen to reinforce European integration.²⁰⁸ Nationality is still defined with domestic law and EU citizenship does not replace national citizenship.²⁰⁹ However, EU citizenship brings various rights to Member State citizens such as freedom of movement, work, consular protection, or to have political participation for the European Parliament.²¹⁰ Therefore, EU citizenship has its own legal and political identity that transcends national borders, based on a shared commitment of upholding shared political space rather than identity.²¹¹ EU citizenship partially reflects Arendt’s theory of ‘right to have rights’ by extending rights beyond national borders, yet its reliance on national legal frameworks highlights the fragility of such rights for non-nationals.²¹²

The rights attached to EU citizenship establishes an additional layer of judicial safeguards in citizenship deprivation as it falls within the scope of EU law, overruling national decisions.²¹³ In

²⁰⁰ Yasemin Soysal, *Limits of Citizenship: Migrants and Post-National Membership in Europe*, (1st edn, University of Chicago Press 1994) (as cited in Katie Tonkiss, ‘Renewing post-national citizenship’ (2022) 26 *Citizenship Studies* 695).

²⁰¹ Fethi Mansouri, Amelia Johns and Vince Marotta ‘Critical global citizenship: contextualising citizenship and globalisation’ (2017) 1 *Journal of Citizenship and Globalisation Studies* 1, 3.

²⁰² Peter J Spiro, ‘A New International Law of Citizenship’ (2011) 105 *the American Journal of International Law* 716-720, 738-746.

²⁰³ Sanja Ivic, ‘Globalization and Postnational Model of Citizenship’ (2018) 1 *Glocalism: Journal of culture, politics and innovation* 1, 6.

²⁰⁴ Spiro (n 202) 746.

²⁰⁵ Ivic (n 203) 7.

²⁰⁶ Katie Tonkiss, ‘Renewing post-national citizenship’ (2022) 26 *Citizenship Studies* 695, 696.

²⁰⁷ *ibid.*, 697-699 see also Damian Tambini, ‘Post-national citizenship’ (2010) 24 *Ethnic and Racial Studies*, 195, 211-212.

²⁰⁸ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47 art 20.

²⁰⁹ *ibid* see also Mariusz Maciejewski and Udo Bux, ‘The citizens of the Union and their rights’ (*EU parliament, Fact Sheets on the European Union*, 2024) < https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_4.1.1.pdf > accessed 14 April 2024.

²¹⁰ *ibid.*

²¹¹ Case C-135/08 *Janko Rottman v Freistaat Bayern* [2010] ECR I-01449, Opinion of Advocate General Poiares Madura para 23.

²¹² Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (1st edn, Cambridge University Press 2004) 129, 169.

²¹³ Case C-135/08 *Janko Rottman v Freistaat Bayern* [2010] ECR I-01449.

Rottman,²¹⁴ the Court of Justice of the European Union (‘CJEU’) applied a proportionality test to assess the impact of citizenship deprivation. These considerations extend to dual nationals, as the CJEU held that EU citizenship cannot be dismissed solely on the basis of holding another nationality.²¹⁵ Similar protections have been recognised for third-country nationals, especially those with caring responsibilities for a minor EU citizen.²¹⁶ Courts acknowledge the possible legitimacy of deprivation in some cases, but they are not reluctant to intervene in domestic laws.²¹⁷ For example, the Court reminded us that national decisions must still meet a proportionality test even when domestic law revoked citizenship for dual nationals living outside the EU for 10 years and their children.²¹⁸ Overall, EU law is arguably adequately constitutionalised to be considered autonomous, which can raise constitutional confrontation from member states.²¹⁹ However, EU citizenship does not offer unconditional protection. Factors such as national security or attempts to invoke EU law to claim residence rights purely in internal situations can significantly limit the protection offered by EU law.²²⁰ Arguably, post-nationalism fails to respond to the resurgence of nationalist citizenship policies by states, especially regarding the rising European migration crisis.²²¹

The case of the UK may serve to illustrate this point, as studies suggest the UK had a strong national identity despite their former participation in the EU, and EU migrants still received different treatment in the UK.²²² This highlights the extent of impact that EU citizenship can provide, signifying the necessity of cultural shift to change an internalised nationhood.²²³ Additionally, Koopmans and Statham’s study remains relevant to understand the persistence of national frameworks for ethnic minorities.²²⁴ Their analysis of 1990s Britain revealed 86 per cent of rights claims were directed at national institutions instead of supranational bodies.²²⁵ While Britain’s multicultural model offers migrants political and social rights, the recognition of ethnic minorities may reinforce fragmentation in the community.²²⁶ This remains relevant, as persistent use of national frameworks portrays post-nationalism as an aspirational idea for the UK. For example, Brexit offers key insight on how migration can be one of the defining elements to respond to globalisation by re-defining the national identity to distance from EU.²²⁷ Furthermore, critiques of post-nationalism often misconstrue it as a replacement for national institutions, overlooking its potential as a complementary force derived from nationalism.²²⁸ Instead, post-nationalism should be perceived as a critical foundation to identify and challenge exclusionary practices embedded in the everyday lives of citizens.²²⁹

²¹⁴ *ibid* para 55.

²¹⁵ Case C-369/90 *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria* [1992] ECR I-04239 para 11.

²¹⁶ Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l’emploi* [2011] ECR I-01177 para 45.

²¹⁷ Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken Caia Vlieks* [2019] ECLI:EU:C:2019:189 paras 38-49.

²¹⁸ *ibid*.

²¹⁹ Jo Shaw, *EU citizenship: Still a fundamental status?* in R Bauböck (ed.), *Debating EU Citizenship* (1st edn, IMISCOE Research Series, Springer Open 2019) 7-11.

²²⁰ e.g. for national security: *Johansen v Denmark* App No 27801/19 (ECtHR, 1 February 2022) for an example of internal use cases: Case C-434/09 *Shirley McCarthy v Secretary of State for the Home Department* [2011] ECR I-03375.

²²¹ *Tonkiss* (n 206) 697,698.

²²² Katherine E. Tonkiss ‘Post-national citizenship without post-national identity? A case study of UK immigration policy and intra-EU migration’ (2013) 9 *Journal of Global Ethics* 35, 40.

²²³ *ibid*.

²²⁴ Ruud Koopmans and Paul Statham ‘Challenging the Liberal Nation-State? Postnationalism, Multiculturalism, and the Collective Claims Making of Migrants and Ethnic Minorities in Britain and Germany’ (1999) 105 *American Journal of Sociology* 652.

²²⁵ *ibid* 679.

²²⁶ *Ibid*, 692.

²²⁷ Michaela Benson and Nando Sigona, ‘Reimagining, Repositioning, Rebordering: Intersections of the Biopolitical and Geopolitical in the UK’s Post-Brexit Migration Regime’ (2024) 58 *International Migration Review* 2040, 2044-2048, 2059-2060.

²²⁸ *Tonkiss* (n 206) 699, 670.

²²⁹ *ibid*.

To fully understand why post-national or rights-based models have struggled to align with the UK, it is important to revisit the historical context explored above, which shows that nationality laws were influenced by immigration concerns and were enacted to govern existing populations rather than to define a unified national identity. While many European states shaped their theory of nationality through constitutionalism from the French revolution, the UK lacks a unified nationality theory as it did not receive the same influence.²³⁰ Notions of nationality remains ambiguous, shifting between British and UK identities where the UK itself is multinational.²³¹ Therefore, citizenship is seen as a defining element of governance to define who abides with the law, unlike the EU citizenship.²³² Deprivation powers reflect this, by emphasising strict governance and blurring the underlying elements of rights, belonging tied to citizenship.²³³ Even after the BNA 1981 there is ambiguity, with the introduction of five categories of nationality.²³⁴ Therefore, the lack of a unified understanding of nationality enables the expansive use of deprivation powers centred on security, as it is influenced by the historical legacies.²³⁵

Conclusion and recommendations for reform

Despite the recent increase in research about citizenship deprivation, particularly following cases such as *Begum* and legislative reforms since the 2000s, there is still a degree of hesitancy surrounding the topic, which might suggest that the area is still associated with historical totalitarianism or is too political.²³⁶ This article critically examined the UK's citizenship deprivation laws to answer the main research focus: what ethical and human rights challenges arise from the UK's approach to citizenship deprivation and how does it align with international human rights law? The analysis found that current deprivation methods raise significant concerns on fairness, discrimination and the protection of fundamental rights.

Historical developments tracing back to British understanding of nationality demonstrates how colonial legacy derived from the British Empire continue to influence the development of current British nationality laws. These developments have allowed the shift of current laws to provide broad discretionary powers to the executive which is the basis of potential implications arising on fundamental rights. Although national security is a necessity for any country, the analysis of case law, particularly *Begum*, illustrates how deprivation is a practice that carries a broader responsibility of reshaping belonging and identity rather than only being an administrative measure.²³⁷ However, policies are continuing to view it as an administrative measure, which allows for wider implications on rights to be left unconsidered.

Significantly, citizenship is not merely granted and instead, it is claimed through adhering to specific requirements where the laws governing citizenship also intend to define the limits of citizens within the state.²³⁸ From that perspective, the practices of the UK are seen as legitimate exercises of state discretion and fully functional. However, as discussed above, this becomes problematic when citizenship is the 'right to have rights', where deprivation ultimately causes the loss of fundamental human rights. This problem persists in the legal aspects of deprivation, where the UK follows narrow interpretation of international law, challenging universal human rights values. Targeting dual nationals to be subject to deprivation regulations indicates the development of a citizenship hierarchy where one citizen is less worthy of receiving procedural safeguards of protection of fundamental rights.²³⁹

²³⁰ *Dummet* (n 15) 580-582.

²³¹ *ibid.*

²³² *ibid.*

²³³ *Merry* (n 151).

²³⁴ *Dummet* (n 15) 581.

²³⁵ *Naqvi* (n 29) 530-531.

²³⁶ *Mantu* (n 16) 328.

²³⁷ *ibid.*, 342.

²³⁸ *ibid.*, 347.

²³⁹ *ibid.*, 350.

Even though the fundamental international frameworks are leaning towards a defining citizenship as a right, they do not provide full protection in practice. The gaps such as the ineffective definition of *de facto* statelessness signals that the international preference is over maintaining peace and order where stateless individuals are seen as threat to state stability.²⁴⁰ Thus, the notion of having rights by virtue of being human ultimately fails in practice. Particularly, the lack of binding enforcement forces to uphold the right to a nationality leads to the protection of fundamental rights to be tied to state cooperation, which is a significant risk for protection of stateless individuals.²⁴¹

This article examined a key reason for the insufficiency in international law, as it explained how globalisation and rise of international frameworks have led regulations on nationality to be handled with caution due to the impact on state sovereignty.²⁴² Globalisation has illustrated how identity is fluid and plays a broad role in shaping universal values where individuals have started to recognise universal moral values under the global citizenship notion. However, once state sovereignty is understood as a performative measure rather than a fixed principle for domestic governance,²⁴³ EU post-national model of citizenship illustrated above demonstrates that sovereignty will not be undermined when acknowledging the ideal that rights transcend beyond borders. The post-national model citizenship to be understood as a foundational legal status which is afforded with additional legal safeguards, which allows us to draw comparisons with the securitised British citizenship model and observe the urgent need for reform.

Building on these findings, post-nationalism highlights the need to reconsider the relationship between citizenship and rights, and with its increasing relevance, it is necessary for it to be considered for potential reforms. Consequently, these ambiguities arising from citizenship calls for a critical reassessment of British citizenship policies, particularly considering recent legal and policy developments. For example, the CA recently acknowledged how *Begum* has weakened procedural fairness, where an appellant was denied making representation because the deprivation order was issued 30 minutes after notice.²⁴⁴ This suggests that decisions have now started to create inconsistencies, leading to unfair circumstances and legal uncertainty.

Furthermore, in February 2025, the Home Office has amended their guidance on assessing their ‘good character’ requirement in the naturalisation process, where illegal entry to the UK will be a reason to refuse citizenship, regardless of how much time has passed since arrival.²⁴⁵ While it is argued that illegal arrival is against good character²⁴⁶, this directly affects stateless individuals or asylum seekers where they do not have ordinary means of travel opportunities. This change potentially breaches international obligations, where penalisation for illegal entry is prohibited, and states should facilitate the assimilation and naturalisation of refugees.²⁴⁷ Significantly, this shift affirms the idea that citizenship is increasingly shaped by security priorities, rather than inclusion or identity. Although International bodies have acknowledged the UK’s right to define

²⁴⁰ *ibid*, 328.

²⁴¹ *ibid*, 329.

²⁴² *ibid*.

²⁴³ *ibid*, 348.

²⁴⁴ *Secretary of State for the Home Department v Kolicaj* [2025] EWCA Civ 10 (CA) [15] – [43].

²⁴⁵ Home Office, ‘Guidance: Good character requirement’ (Gov UK, 13 February 2025) <<https://www.gov.uk/government/publications/good-character-nationality-policy-guidance/good-character-requirement-accessible>> accessed 10 April 2025.

²⁴⁶ *ibid* see also HL Deb 12 February 2025, vol 843 cols 1252-1253.

²⁴⁷ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 31 see also Colin Yeo, ‘New change to Home Office policy permanently blocks refugees from citizenship’ (*We wanted workers*, 11 February 2025) <https://wewantedworkers.substack.com/p/new-change-to-home-office-policy?r=1djydi&utm_campaign=post&utm_medium=web&triedRedirect=true> accessed 10 April 2025.

citizenship, this amendment has been criticised as it may create outcomes that are conflicting with UK's international law obligations.²⁴⁸

However, even though the current policies or Brexit is shifting away from European immigration policies, elements of shared judicial safeguards, proportionality or protection of fundamental rights still may offer inspiration for future reform to adopt a balanced approach to citizenship. Attaching rights to citizenship similar to EU model could be a step toward reforming the BNA 1981, aiming to create clear and equal law.²⁴⁹ Studies show that access to citizenship improves all aspects of integration in the society and economy for immigrants.²⁵⁰ Even allowing voting rights to migrants with indefinite leave to remain can be a significant step to enhance social integration.²⁵¹ Therefore, providing incentives through citizenship can encourage settled migrants to fully integrate as citizens.²⁵² To achieve aims of integration, the route to citizenship must be accessible through easing the procedural process alongside associated costs.²⁵³ Clarifying the definition of citizenship and tying it to fundamental rights would also impact the deprivation powers, as it would be inevitable to consider implications on individuals' fundamental rights towards deprivation decisions.

It has become more evident that while citizenship is seen as a legal status, it functions as a political instrument and a privilege. Significantly, it can be interpreted that the inconsistency arising from case decisions is because the understanding of citizenship remains administrative. Ultimately, citizenship should be understood as a fundamental legal right to maintain democratic values, especially equality.²⁵⁴ However, the policies signal resurgence of nationalism, therefore these recommendations remain largely symbolic for the near future.²⁵⁵ One should not forget that when citizenship is treated as a privilege, access to rights becomes a privilege too.²⁵⁶

²⁴⁸ UNHCR, 'Observations on the Border Security, Asylum and Immigration Bill' (Executive Summary, 2025) para 72-75.

²⁴⁹ Colin Yeo, 'Five principles for a new British Citizenship Act' (*We wanted workers*, 26 September 2024) < <https://wewantedworkers.substack.com/p/five-principles-for-a-new-british>> accessed 11 April 2025 see also Katherine Tonkiss and others, 'The Future of 'Citizenship Policy' in the UK' (*University of Bristol Law School Blog*, 7 February 2020) < <https://legalresearch.blogs.bris.ac.uk/2020/02/the-future-of-citizenship-policy-in-the-uk/>> accessed 11 April 2025.

²⁵⁰ Christina Gathmann and Julio Garbers 'Citizenship and integration' (2023) 82 *Labour Economics* 1, 14-15.

²⁵¹ (n 249).

²⁵² *ibid.*

²⁵³ *ibid.*

²⁵⁴ Katherine Tonkiss and others, 'The Future of 'Citizenship Policy' in the UK' (*University of Bristol Law School Blog*, 7 February 2020) < <https://legalresearch.blogs.bris.ac.uk/2020/02/the-future-of-citizenship-policy-in-the-uk/>> accessed 11 April 2025.

²⁵⁵ *see* (n 244), (n 245) *discussed above*.

²⁵⁶ *Arendt* (n 1).